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| 30542 7590 10/09/2007 FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278 | | | EXAMINER NGUYEN, TAN D | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/764,787
Filing Date: January 17, 2001
Appellant(s): SCHWARTZ ET AL.

Sanjeev K. Dhand
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 23, 2007 appealing from the Office action mailed July 6, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. Claims 103-105 are not appealed.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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McBrearty, B.R. "What's Ahead For Telemarketing", Fund Raising Management, (December 1986), pp. 1, 4, 71-76.

Smith, G.E. "The impact of direct marketing appeals on Charitable marketing effectiveness", Journal of the Academy of Marketing Science, v24n3 (Summer 1996), pp. 1-18

"-BT: Sheryl GascoigneBT Swimathon '99", M2 Presswire, (Nov. 27, 1998), pp. 1-4
"Leukaemia Busters Fundraising Week", 26th June - 4th July 1999, pp. 1.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 58-72, 75, 77-81, 82-94, 97-101, 102, 106-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over COSTIN IV, et al (US 2002/0049816) in view of McBREARTY (Article 12/1986), SMITH et al (Article "The Impact ... Charitable marketing effectiveness, Summer1996") and Article "BT: Sheryl Gascoigne ...Swimathon '99 (hereafter as "BT Article") or Article "Leukaemia Busters Fundraising week, June-July 1999 (hereafter as "LEUKAEMIA Article")

Claim 58 is as followed:

58. (Previously Presented) A method for conducting a fundraising campaign by an organization over a wide-area network, comprising the steps of:

hosting a website including a plurality of linked web pages, the website providing information about the fundraising campaign and soliciting potential donors to make a charitable contribution to the fundraising campaign;

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providing a link to a personal donation page in one or more email messages to parties, the personal donation page having the name and personal campaign goal of a solicitor registered on the website;

receiving a charitable contribution via the personal donation page from a donor;

updating, according to instructions from the donor, one or more virtual plaques displayed on one or more web pages to recognize new donors;

forming teams on the website, to participate in the fundraising campaign by soliciting donations by emails, wherein the teams compete with each other to raise money; and

displaying team ranks on the virtual plaques.

Note: Claim 58 which has the same limitation as the combination of claims 103-105 and is rejected in the office action of 07/06/2006 for the same reasons set forth in the rejections of claims 103-105. Since claims 103-105 are not appealed, the examiner is rewriting the rejections of claim 58 independently but this should be the same rejections for claims 103-105 previously.

As for independent claim 58, COSTIN, IV et al discloses a method for conducting a fundraising campaign by an organization over a wide-area network comprising the steps of:

a) hosting a website (Fig. 1 (26) including a plurality of linked web pages, the website providing information about the fundraising campaign and soliciting potential

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donors to make a charitable contribution to the fundraising campaign {see Fig. 2, [0006], [0066 "software and architecture associated ... may be internal to the sponsor or cause]};

b) providing a link to a campaign web page of a 2nd entity (business or personal) which has the ability to send one or more email messages to 3rd parties (customers, employees, etc.), the campaign web page having the name and personal campaign of the solicitor {[0006, 0007, especially [0010 "...*personalized campaign page and sending e-mails to anyone they choose...*", Fig. 3]; and

c) receiving a charitable contribution from a donor via a separate website (web page) maintained by a fundraiser service provider {see Figs 3-6, [0009]} or web page by sponsor/e-business {see Fig. 6} or web page by a cause/charity organization {see Fig. 3 "*Little League*"}. COSTIN, IV et al fairly teaches the claimed invention except for the 2nd entity web page is of business or e-business and not a personal donation page. Note that on [0007], COSTIN, IV et al discloses the concept of e-mail networking component to be viral as fundraiser can send out an indefinite amount of requests supporting the cause they care about, therefore, it would have been obvious for the e-business to send out email messages to employees to ask them to visit the e-business website where they are presented with a link to a campaign web page {see [0009]}. As for the limitation of registering by a solicitor on a website, this is inherently included and/or fairly taught in Fig. 2, [0070, 0080]}.

Note that on [0010], COSTIN, IV et al discloses the setting up of a campaign web page of a 3rd entity (customers/employees/donors) whereby they can become individual

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fundraiser with a personalized campaign page and able to send email messages which includes link to a campaign page of the organization or the 2nd entity (e-business/sponsor) or fundraiser service provider. It would have been obvious to modify the teachings of COSTIN, IV et al by creating a similar campaign web page for the 3rd entity (individual fundraiser) having the name and personal campaign goal similar to 2nd entity (step b above) as mere duplicate of similar campaign web page for other similar entity (fundraisers) or creating other similar campaign web page for other similar entity to obtain similar results, absent evidence of unexpected results. Clearly, having a campaign web page with showing well known campaign parameters, such as name of the project, goal, deadline, responsible parties etc. for every fundraiser is more effective/better marketing tools but the cost to create and maintain effectively the websites of many entities involved will be extremely high. So this is a balance between cost and profit (donation or contribution collected) but the concept of creating a personalized campaign page for a fundraiser is taught in COSTIN, IV et al and would have been obvious to implement for any entity, e-business or individual, if the cost is justified. Note, that no evidence has been submitted to show why it's not obvious to create a personal campaign web page for individual fundraiser in view of web page for e-business/sponsor.

Note also in [0010], COSTIN IV, et al discloses the setting up a personalized campaign page and sending e-mails to anyone they choose and wherein the e-mail message including a link to the campaign page or e-business web site whereby the donors can make donation. Since the teaching of setting up of a campaign page

containing (a) name and (b) goal on the web page is taught in Fig. 3 for charity organization or Fig. 6 for business-sponsor, the practice of this teaching for the personal donation page of the solicitor or individual would have been obvious to an artisan as mere applying similar teaching to other similar application to achieve similar results, absent evidence of unexpected results.

Note that in COSTIN, IV et al, it appears that when the donor makes a charitable contribution to the personal donation page, the contribution is seamlessly transferred to a separate web site maintained by a provider or sponsor/business webpage so the donor can make a donation {see [0009-0010]}. Therefore, COSTIN IV, et al fairly teaches the claimed invention except for receiving the contribution via the personal donation page from a donor when receiving the charitable contribution, and the subsequent steps of "updating ...new donors", "forming teams ...new donors" and "displaying team ranks... virtual plaques".

In another method for raising funds, McBREARTY discloses one of the key variable for fundraising campaign is developing a personal relationship with the donor whereby the appeal is "be an intimate part of my campaign" (or of the solicitor's campaign) and not "please send money" {see page 72, element (3), page 75, 1st full paragraph}. The theme is on "customer service" approach to fund raising campaign which both increases the campaign cost, but more dramatically increases the loyalty of, and total giving from the donors to be "an intimate part of personal campaign" {see page 75, 1st paragraph}. It would have been obvious to modify the donation receiving step in the fundraising campaign of COSTIN IV, et al by creating a personal donation page

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whereby donor can make donation to the personal donation page (or the solicitor's page) and to be a part of personal campaign of the solicitor as taught by McBREARTY since developing a personal relationship and be an "intimate part of my campaign" with the donor" is a key parameter to successful fundraising or increasing the giving dramatically. Surely, having a personal page with name and personal campaign goal of the solicitor whereby the donor or friends of the solicitor can donate through the personal page fits the goal of McBREARTY whereby the solicitor can develop a personal relationship with the donor. In other word, the donor is giving to his friend/family member web page to help his friend or family member to achieve his/her own fundraising campaign goal or giving because of relationship since friend likes to help friend. If the donor donates via the system of COSTIN IV, et al, i.e. through a website by a business sponsor organization or charity organization or service provider, wherein the donor does not normally know these organizations, there is likely less chance to give because there is no personal relationship involved, as taught by McBREARTY above.

Note also that COSTIN, IV et al also teaches the steps of:

d) displaying one web page about the donor (donor highlights) and

e) displaying fundraising campaign statistics/results (or tracking performance)

such as bringing up to-date (or updating) campaign statistics, i.e. "*to-date donation amount*", "*goals* (number of donors, dollar amount (\$) by stages, etc.",

{see Fig. 6, or 12 "*Donation-to-date:*" or "*To Date:*", or

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Fig. 13, last paragraph “login and track the progress of your campaign! See who has donated and how the progress your campaign has contributed to the overall Coolsavings/Y-ME online fundraising campaign.” or Fig. 20, right column, [0082]}. Therefore, a combination of) COSTIN IV, et al (US 2002/0049816) in view of (2) McBREARTY would produce a personal donation page with the personal campaign goal and progress/status information so the donor can see the progress/status of the campaign and donate to the campaign. Also, the updating of any other fundraising campaign statistics/results such as the goals cited above [0081], number of donors, who are the donors, dollar amount (\$) by stages, donor’s amounts, etc., are inherently included (see Fig. 13) or would have been obvious as mere updating other similar features. {see also Fig. 1a, 0006, 0007, 0009, 0010, 0019, 0065, 0067, 0070, 0071, 0072, 0075, 0082, 0083}.

However, the teachings of COSTIN, IV et al and McBREARTY fails to teach the steps of

“updating ...new donors;”, “forming teams ...to raise money” and “displaying team ranks....virtual plaques”.

In a similar method of direct marketing appeals on charitable (fundraising) marketing effectiveness, **SMITH et al** cite several relevant charitable appeals or factors or strategies, i.e., an increase in size (amount) of donation for this year relative to last year by:

1) **exposure** (or **display**) to a list of other donors increases the response rate but not the average gift, however, when

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2) **size** of others' donations was included in the list, the average donation increases {see page 5, 5th paragraph} for example (by the examiner's interpretation):

LIST

| | <u>Donors</u> | <u>Amount Donation (\$)</u> |
|----|----------------|-----------------------------|
| 1. | Jane Doe | 200.00 |
| 2. | Participant 2. | 100.00 |
| 3. | Participant 3. | 125.00 |

(etc., see page 5, 5th paragraph).

It would have been obvious to modify the fundraising campaign of COSTIN IV/McBREARTY et al by including the above **strategies** (1) and (2) for the benefit of increasing the size of donation for this year relative to last year in the campaign by: (g) listing of donors, top-three or five list, size of donations in the list, etc. as taught by SMITH et al/McBREARTY for the benefits (2) of increasing (1) the response rate and (2) average donation or increasing the size of donation this year as compared to last year. As for the term plaque (or showing of a list on the website), this read over the showing of the list of the donors and size of donations as taught by SMITH et al when appear on the website of COSTIN IV et al. As for the term virtual (or cyber or on Internet or web), this is taught in COSTIN IV et al and inherently included when combining COSTIN IV et al/ McBREARTY and SMITH et al. As for the limitation of "honoring the donor", this is inherently included when showing the list above and inherently included in the teachings of COSTIN IV et al / McBREARTY / SMITH et al. Note that SMITH et al fairly discloses the concept of displaying the list of donors, their positions on the list. Note that

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rearranging of the list items to show individual ranks, i.e, (1st for highest amount of donation, last for lowest amount of donation), would have been obvious to a person of skill in the art as mere equivalent/similar arrangement for clarity or identification purpose. Note that the concept of presenting donation figures in order from low to high for clarity and easy identification is also taught in (3) above.

As for the difference between the communication means for carrying the campaign, digital (website) vs. direct mail in COSTIN IV et al /McBREARTY and SMITH et al, this is not critical since we deal with campaign strategies and would have been obvious to implement these strategies in the wide-area network campaign of COSTIN IV et al or regardless of the types of communication means. As for the updating function of the list or virtual plaque, this is well known campaign parameter as taught by COSTIN IV et al on Fig. 6 or 12 "To Date." or Fig. 13 above and would have been obvious to implement this known parameter for the listing of the donors in view of the teaching of SMITH et al if desired.

The teachings of COSTIN, IV et al /McBREARTY and SMITH et al fails to teach the steps: ";", "forming teams ...to raise money" and "displaying team ranks....virtual plaques".

In another similar charity fundraising campaign, (3) BT Article is cited to teach the types of participation in a fundraising campaign such as an individual, as a family group, as a group of friends or as **teams competing** against each other to raise money for the campaign and winning the coveted BT Trophies (**prize**), which is top fundraisers **winning** a holiday of a lifetime to the La Manga Club Resort in Spain, awarded for (1)

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speed of performance or (2) fundraising success (raising the most money) {see page 1 and 2, notes (1) or (2)}.

In another similar charity fundraising campaign, (4) LEUKAEMIA Article is cited to teach the types of participation in a fundraising campaign such as an individual, as a family group, as a group of friends or as **teams competing** against each other to raise money for the campaign {see page 5, left column}. It would have been obvious to modify the teachings of COSTIN IV et al /McBREARTY / SMITH et al by changing the type of participation to forming teams to participate in the campaign and compete with each other to raise money as taught by BT Article or LEUKAEMIA Article as mere using other similar participation types or alternatives or options. Furthermore, it's well known that team competition normally improve the morality and people involvement as compared to individual type but at the expense of inconvenience to get all the people together. As for the teaching of step (j), the displaying of the participant/donor (team) positions (ranks) on the plaque (list), this is fairly by SMITH et al as shown above. As for the term "ranks" which is equivalent to the term "position" relative to each other, this has been discussed in the previous paragraph below the "LIST". Furthermore, since BT Article teaches the awarding of the "**top** fundraiser" with winning prize, it would have been obvious to modify the teachings of COSTIN IV et al / McBREARTY / SMITH et al /BT Article by arranging the list of donor in ranking position, top fundraiser to bottom fundraiser, to effectively monitor or track the campaign performance effectiveness. Alternatively, Official notice is taken that the step of displaying (showing) participant (individual or team) position/rank periodically in a competition event (campaign/season)

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to track progress (performance) of the participant is old and well known (see NFL (team position/rank after each game), LPGA, Tour De France (individual positions, and team positions/ranks after each stage). Therefore, it would have been obvious to implement the displaying of the participant (team) ranks in COSTIN IV et al / McBREARTY / SMITH et al /BT Article or LEUKAEMIA Article in order to track the progress of the participant.

As for dep. claims 59-60 (part of 58), which deal with well known fundraising campaign parameter, i.e. contacting 3rd party to provide more information about participants such as a team participating in a competition associated with the campaign, this is non-essential to the scope of the claimed invention and would have been obvious in view of the teachings of COSTIN IV et al /SMITH et al and BT Article or LEUKAEMIA Article above, especially in COSTIN IV et al [0010, 0019].

As for dep. claim 61 (part of 58), which deals with well known fundraising campaign parameter, i.e. tracking the progress of the campaign by providing real time status of fundraising campaign, this is taught or inherently included in COSTIN IV et al on Fig. 6, "**Donation-to-date**", "**To Date**:", Fig. 12, or [0063 "**tracking donor's**", "**instantaneous, easier to track**", "funds typically are received **immediately**", [0072], [0081 "**tracking information related to fundraising campaign**"] or [0082 "**dollar amount by stages**"] }. Alternatively, it would have been obvious to provide a real time status (today, to-date) of the campaign in the report to effectively track the progress of the campaign as taught by COSTIN IV et al above.

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As for dep. claims 62-67 (part of 58), which deal with well known fundraising campaign parameter, i.e. joining, forming a team or recruiting new members, these are none-essential to the scope of the claimed invention and are fairly taught in BT Article or LEUKAEMIA Article as cited above.

As for dep. claims 68-72 (part of 58), which deal with well known fundraising campaign parameter, i.e. the campaign including other special athletic event, entertainment event, or other community events, these are none-essential to the scope of the claimed invention and are fairly taught in COSTIN IV et al Figs. 7-9, [0066, 0086] or BT Article or LEUKAEMIA Article as cited above.

As for dep. claim 75 (part of 58), which deals with well known fundraising campaign parameter, i.e. providing a personal web page with link and email for a solicitor, these are fairly taught in COSTIN IV et al [0010, 0012, 0013].

As for dep. claim 76 (part of 58), which deals with well known fundraising campaign parameter, i.e. wherein the report includes donor's benefits such as tax related information, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al Fig. 5, [0073, 0080].

As for dep. claim 77 (part of 58), which deals with the type of wide area network, the Internet, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al Fig. 1a, Fig. 2, [0007].

As for dep. claims 78-80 (part of 58), which deal with well known fundraising campaign parameter, i.e. the type of the organization, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al [0003, 0012].

As for dep. claim 81 (part of 58), which deals with well known fundraising campaign parameter, i.e. a person conducts the campaign, this is non-essential to the scope of the claimed invention and is fairly taught in COSTIN IV et al [0084 "individual or student"].

As for dep. claim 106 (part of 58), which deals with well known fundraising campaign parameter, i.e. providing one or more reports on the website about the campaign status, etc., this is taught in COSTIN, IV et al Fig. 3, 20.

Alternatively, the various adjustments of the fundraising parameters as shown in the dependent claims 59-81, and 106 are considered as optimizing fundraising operating conditions or result effective variables /parameters and the optimizing of result effective variables is considered as routine experimentation to determine optimum or economically feasible reaction conditions and would have been obvious to the skilled artisan, absent evidence of unexpected results. In re Aller, 105 USPQ 233. Moreover, they are fairly taught in COSTIN IV et al [0082, 0084, 0086, especially 0087 "*other embodiments and uses will be apparent to the skilled artisan*"].

As for independent system claim 82, which is the system to carry out the independent method claim 58 above, it's rejected over the system (means for) to carry out the method claim 58 (step of) as rejected by COSTIN IV, et al in view of McBREARTY, SMITH et al and (4) BT Article or (5) LEUKAEMIA Article as indicated above. See also COSTIN, IV et al [0066], for putting the software and architecture internal to the sponsor or cause for seamlessly connecting.

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As for dep. claims 83, 86-89, 84-85, 90-94, 97-101 (part of 82), which have the same limitations as in dep. claims 59, 62-64, 67, 60-61, 68-81 (part of 58) above, they are rejected for the same reasons set forth in dep. claims 59, 62-64, 67, 60-61, 68-81 above.

As for independent program product claim 102, which is the program file to carry out the independent method claim 58 above, it's rejected over the program file to carry out the method claim 58 (step of) as rejected by (1) COSTIN IV, et al in view of (2) McBREARTY, (3) SMITH et al and (4) BT Article or (5) LEUKAEMIA Article as indicated above.

(10) Response to Argument

In response to Applicant's comment with respect to the "Application Background" on page 8, section A is noted. The examiner did make a decision to allow the case previously (Jan. 11, 2005) relied on secondary evidence submitted at that time. However, upon reconsider of the evidence after the RCE was filed in July 27, 2005, it appeared that the examiner has missed to identify other issues with respect to the claimed success or result of the secondary evidence. The examiner decided to reopen the case and challenged the result of the secondary evidence on the claimed invention in the office action mailed on 11/3/05 as shown below to which applicant's response were not considered to be persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

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are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On pages 9-10, element B., applicant's comment that McBREARTY does not teach "receiving a charitable contribution ... via [a] personal donation page" is not persuasive since the web page or donation web page is taught by COSTIN, IV et al. McBREARTY is merely cited to teach the set up of a personal campaign by the solicitor so contribution can be made to the solicitor's campaign instead of the general campaign.

On page 10, element C, applicant's comment that the examiner fails to consider secondary evidences such as (1) onphilanthropy.com Article on page 12, which mentions the "Friends Asking Friends" via the personal donation page innovation element, or (2) San Diego Metropolitan Article on page 13, which also mentions the "Friends Asking Friends" innovation element, or (3) Customer Testimonials on page 14, which also mentions the "Friends Asking Friends" innovation element, and (4) Commercial Success or unexpected results of "Friends Asking Friends" innovation element on pages 15-17, these information have been reviewed by they are not found to persuasive for the following reasons which have been cited by the examiner in the previous office actions:

(1) such as in 11/03/05, which deals with item (4) above:

The Affidavit in Support of Nonobviousness filed on 1/27/04 has been reviewed but not found persuasive. It's not clear whether the results, 2003 for a 6.6x time growth,

is due to the elements (3) shown in the claimed invention, (1) *the virtual plaques*, (2) *team competition* and (3) *team ranks*, as mentioned on paragraph (4.) by the inventors. The result could be caused by the effective using of the Internet and this is obvious in view of the teaching of COSTIN IV et al on [0003] of “**exploding**” results due to the use of **online fundraising**. Applicant needs to submit objective results showing regular online donations **with and without** the three (3) elements cited above show the examiner can be convinced that the increase is not due only by the use of Internet as taught by COSTIN IV et al above. Applicant's statement on paragraph (7) on the 2nd page with respect to the use of the Internet has been reviewed but this is not specific enough or does not include objective evidences. What are the results on online donations in 2000, 2001, 2004. Are the results after the implementations of (3) items above consistent or merely a surge in one year (i.e. 2003)? Otherwise, the success could be due to outside influences such as heavier promotion or advertising during these period.

(2) As for the programs “Friends Asking Friends” innovation element shown in items (1)-(3) above, this program is similar or taught or appears to **be similar** to **COSTIN, IV et al [0019] “Friend-to-Friend Fundraising TM”** system. With the personal donation campaign or page, this is also taught in COSTIN, IV et al {[0009]-[0010]} and further by McBREARTY. Moreover, these comments on pages 12-13, items (1)-(3) are merely objective evidence not supported by actual proof. See MPEP 716.01 (c) [R-2]. Furthermore, any secondary evidence must be related to the claimed invention, in this case, the elements/steps as shown in claim 58 above. Otherwise, the success could be

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due to outside influences such as heavier promotion or advertising during these period.

Also, success could be due to the Internet which has been addressed above.

(3) Examiner's response on July 06, 2006.

" Exhibit

The Exhibit A filed on 4/20/06 is in sufficient to overcome the 103 rejections of claims 58-72, 75-94, 97-107 over COSTIN IV, et al /McBREARTY or SMITH et al and

(4) BT Article or (5) LEUKAEMIA Article.

Applicant's comment on page 13 that the program "Friends Asking Friends" innovation to Salvation Army Staff is not persuasive because this program is similar or taught or appears to be similar to COSTIN IV, et al [0009], [0019] "Friend-to-Friend Fundraising System". Moreover, this is merely objective evidence not supported by actual proof. See MPEP 716.01 (c.) [R-2]. Furthermore, any secondary evidence must be related to the claimed invention. On page 2, under "what we did right", list the 4 items appear to contribute to the success on the previous page, but items (1)-(4) are not in the claims."

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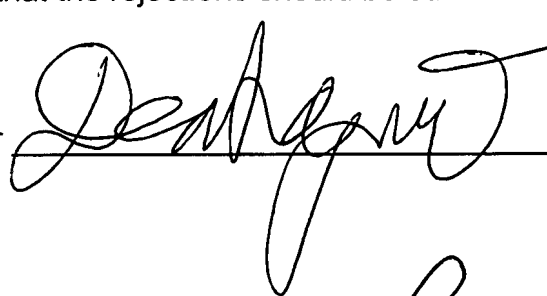
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

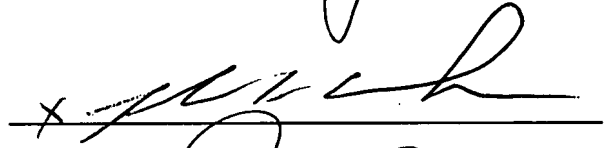
Respectfully submitted,

Dean Tan Nguyen, Primary Examiner

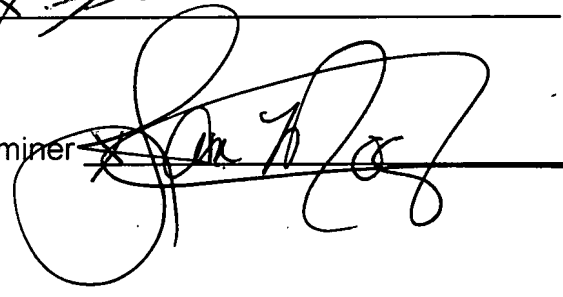
A handwritten signature in black ink, appearing to read 'Dean Tan Nguyen', written over a horizontal line.

Conferees on 9/21/07

1) John Weiss, SPE 3629

A handwritten signature in black ink, appearing to read 'John Weiss', written over a horizontal line.

2) Janice Mooneyham, Primary Examiner

A handwritten signature in black ink, appearing to read 'Janice Mooneyham', written over a horizontal line.